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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/508,902

09/23/2004

Touichirou Takai

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7590

09/12/2006

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EXAMINER

ROSENBERGER, RICHARD A

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/508,902

Applicant(s)

TAKAI ET AL.

Examiner

Richard A. Rosenberger

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>09/23/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

1. The abstract is too long, and needs to be shortened.
2. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims appear to be a translation from a foreign language and are not in US form. The claims should all be reviewed for clarity and form.

In claim 1 the phrase “on the conditions of a light section formed on the image forming surface or conditions of the speckle pattern” is unclear in that it is not clear whether the “or” is indicating different alternatives or merely different characterizations of a single phenomena. As understood, the “conditions of a light section ...” refers to the speckle pattern.

Claim 7 is confusing. The “or at least one of them” in line 7 of the claim does not appear to be grammatical or have clear antecedent basis.

Claims 2-6 at least inherit the above rejection of their parent claim 1.

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-6 are rejected under 35 U.S.C. 101 because, as understood, the final step is merely evaluating does not appear to be sufficient to constitute a tangible result, since

the outcome of the evaluating step is not being claimed in a disclosed practical application nor is it outcome being made available in such a manner that its usefulness in a disclosed practical application can be realized. See OG Notices: 22 November 2005, "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility".

Claims 2-6, dependent from claim 1, are similarly rejected because none of these claims add to their parent claim the required practical application or make the outcome available in such a manner that its usefulness in a disclosed practical application can be realized.

5. As set forth above, claim 7 is not understood. To the best understanding of the claim, the following rejection applies.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Hiroi et al (US 4,641,527).

Hiroi et al shows, in particular in figure 13, a device for carrying out a material body evaluation method comprising a material body (8) constituting at least one row in a transverse direction against a moving direction (see the table controller 22), light irradiation device (laser 12) which irradiates a light having at least one spot shape or line shape section traversing a moving direction fixed to or separated from a light irradiation photographing device (18) prepared by arranging at least one of two-dimensional image recognizing means (35; see col. 9, lns. 32-33) or at least one of them is moved by a moving means, thereby carrying out scanning measurement of almost full face or full face of each material body (8) which can be observed in a photographing direction of the two-dimensional image recognizing means (35).

8. Hiroi et al shows using a speckle pattern to evaluate an object; see the abstract, last two lines. This is also shown by Dengler et al (US 6,417,916), see column 6, lines 3-30.

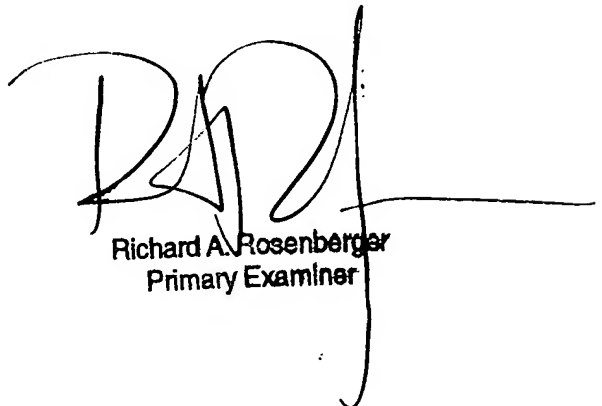
9. The art does not appear to teach or suggest the use of such speckle patterns to indicate the gel state of a product. Thus there appears to be allowable subject matter disclosed in the application.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger
1 September 2006



Richard A. Rosenberger
Primary Examiner